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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/788,569

Filing Date: February 27, 2004

Appellant(s): STEMPFLE ET AL.

MAILED

APR 17 2007

Group 3700

Craig J. Loest
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/16/2006 appealing from the Office action mailed 11/15/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,934,088	TAKEDA	8-1999
4,381,549	STAMP, JR. et al	4-1983
4,663,940	SUZUKI et al	5-1987

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takeda (U.S. Patent Number 5,934,088) in view of Stamp Jr. et al. (U.S. Patent Number 4,381,549). Takeda discloses the invention substantially as claimed. Takeda discloses a refrigerating appliance with an inner chamber enclosed by a heat-insulating housing 10, cooling system having a plurality of electrical and electromechanical components 12-26 and a control unit for operating the cooling system and checking the operation of the system components by comparing the inside temperature to the set temperature to determine a system failure including checking for temperature sensor failure and providing display of the malfunctions (see col. 5, line 2 to col. 6 line 44). Stamp teaches checking the operativeness of temperature sensors before checking for other possible system malfunctions (see col. 8, line 68 to col. 9, line 47). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the system of Takeda such that it included checking the operativeness of temperature sensors before checking for other possible system malfunctions in view of the teachings of Stamp.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takeda in view of Stamp, Jr. et al as applied to claim 8 above, and further in view of Suzuki et al. Suzuki teaches using a combination of keys actuated concurrently in order of activate the diagnostic mode of a cooling system (see col. 7, line 58 to col. 8, line 56). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the system of Takeda such that it included using a combination of keys actuated concurrently in order of activate the diagnostic mode in view of the teachings of Suzuki. The use of keys on the opposite

sides of the display is considered to have been an obvious matter of engineering design choice since the operation of the diagnostic system would not be substantially altered and it would have been obvious to one of ordinary skill in the art to use any two keys on the display to activate the diagnostic mode.

(10) Response to Argument

Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takeda in view of Stamp Jr. et al.

In re pages 9-13, Appellant first argues that “[s]imply put, the operativeness of the coolant circuit is checked only after a check of the temperature sensor indicates that the sensor is functioning. Thus, the control unit will not perform a check on the coolant circuit if there is an indication of a malfunction of the temperature sensor” (page 9). In response to Appellant's argument that the references fail to show certain features of Appellant's invention, it is noted that the features upon which Appellant relies (i.e., the operativeness of the coolant circuit is checked **only** after a check of the temperature sensor indicates that the sensor is functioning and the control unit **will not** perform a check on the coolant circuit if there is an indication of a malfunction of the temperature sensor) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The limitation in the claim 8 recites “the control unit checking the operativeness of the coolant circuit if first checking the operativeness of the temperature sensor does not provide an indication of a malfunction of the temperature sensor”. The feature of “will not check the operativeness of the coolant circuit if first checking the operativeness of the temperature sensor does provide an

indication of a malfunction of the temperature sensor" is not in the claim because nothing is mentioned about the control function when the temperature sensor does have a malfunction. The prior art control unit checks the operativeness when there is a malfunction and when there is no malfunction. Therefore, whether to check the coolant circuit if there is an indication of a malfunction of the temperature sensor is irrelevant in the claims.

Second, the Appellant argues that Takeda does not rely on the temperature sensors to evaluate all the other functions of the system (pages 10-12). The Examiner respectfully disagrees with Appellant's argument. Takeda discloses that "[t]he clog sensor 24 is disposed in an outlet pipe of condenser 16 to detect a **temperature T4** of refrigerant at the outlet side of condenser 16 for producing an analog signal indicative the detected refrigerant temperature T4 (col.3, lines 14-17). Therefore, clog sensor 24 is a temperature sensor to evaluate condenser function and the condenser is part of the coolant circuit. Examiner maintains the position that the combination of Takeda and Stamp is appropriate because both references are concerned with temperature controls and detecting malfunctions of the system including the malfunction of temperature sensors used by the temperature control. Stamp teaches the concept of determining the proper operation of a temperature sensor before using that temperature sensor to evaluate the proper operation of other functions of the system (Fig.4, inquiry 197). It is the examiner's position that one of ordinary skill in the art would have considered it to have been obvious to modify the system of Takeda such that temperature sensors used to evaluate the proper system operation are first evaluated as being functional before they are used to evaluate other functions of the system in order to prevent erroneous malfunction indications in view of the teachings of Stamp. In response to Appellant's argument that the examiner's conclusion of obviousness is based upon

improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Appellant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Third, the Appellant argues Takeda teaches away from the claimed invention by teaching the detection and display of a plurality of errors (pages 12 and 13). Appellant asserts Takeda performs all the test and does not stop if one of these tests indicates an error. In response, the stop feature "if one of these test indicates an error" is not in the claim 8. Claim 8 only has the feature when the control function continues if there is not an error. In regard to the argument about the feature of initial inquiry on the temperature sensor is not taught by Takeda, this is taught by Stamp since this is a 35 U.S.C. 103(a) rejection.

Fourth, the Appellant argues Stamp would not teach one of ordinary skill in art to modify Takeda to obtain the claimed invention (page 14). Appellant asserts that Stamp performs an initial inquiry if all the temperature sensors are bad and if any of these temperature sensors are good, the system continues. Appellant argues this is fundamentally different than the claimed invention that only proceeds with checking the coolant circuit if the temperature does not malfunction. In response, claimed invention denotes if the temperature sensor does not malfunction then the coolant circuit is checked. There is no mention about what will happen if there is a malfunction of the temperature sensor.

In conclusion, the claimed feature is “if temperature sensor does not malfunction then checking the operativeness of the coolant circuit” and the argued feature is “if temperature sensor if functioning only then checking the operativeness of the coolant circuit”. The claimed feature is not equivalent to the argued feature. Therefore, limitations from the arguments are not read into the claims and the Office Action is based on the claimed limitations. For the above reasons, it is believed that the rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

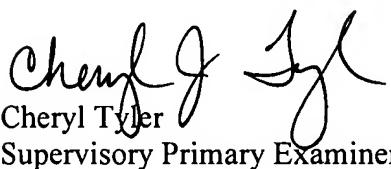
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Chen-Wen Jiang

Conferees:



Cheryl Tyler

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Janet Baxter

TQAS

Application/Control Number: 10/788,569
Art Unit: 3744

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